

# Union Calendar No. 174

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2269

**[Report No. 107–262, Parts I and II]**

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2001

Mr. BOEHNER (for himself, Mr. ARMEY, Mr. SAM JOHNSON of Texas, Mr. TANCREDO, Mr. BAIRD, Mr. LUCAS of Kentucky, Mr. MCINNIS, Mr. FOLEY, Mr. SMITH of Washington, Mr. OXLEY, Mr. DICKS, Mrs. ROUKEMA, Mr. BAKER, Mr. CAMP, Mr. ENGLISH, Mr. GUTKNECHT, Mr. KIRK, Mrs. TAUSCHER, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 31, 2001

Reported from the Committee on Education and the Workforce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 31, 2001

Referral to the Committee on Ways and Means extended for a period ending not later than November 9, 2001

NOVEMBER 9, 2001

Referral to the Committee on Ways and Means extended for a period ending not later than November 13, 2001

NOVEMBER 13, 2001

Additional sponsors: Mr. SHAW, Mr. PAUL, Mr. CRANE, Mr. FROST, Mr.

CHAMBLISS, Mr. TIBERI, Mr. McCRERY, Mr. BALLENGER, Mr. FLETCHER, Mr. McKEON, Mr. SHAYS, Mr. CANTOR, Mrs. BIGGERT, Mr. PLATTS, Mr. GRAHAM, Mr. NUSSLE, Mr. ROGERS of Michigan, Mr. BLUNT, Mr. NEY, Mr. PORTMAN, Ms. DUNN, Mr. GREENWOOD, Ms. PRYCE of Ohio, Mr. CLEMENT, Mr. MATHESON, Mr. CANNON, Mr. KELLER, Mr. BASS, Mr. JONES of North Carolina, Mr. BURR of North Carolina, Mr. OSBORNE, Mr. LATHAM, Mr. CALVERT, Mr. RYUN of Kansas, Mr. CULBERSON, Mr. BROWN of South Carolina, Mr. MORAN of Virginia, Mr. SESSIONS, Mr. HERGER, and Mr. GRUCCI

Deleted sponsors: Mr. BROWN of Ohio (added July 23, 2001; deleted September 24, 2001), and Mr. PASCRELL (added July 30, 2001; deleted September 10, 2001)

NOVEMBER 13, 2001

Reported from the Committee on Ways and Means with an amendment; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on June 21, 2001]

---

## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Retirement Security Ad-*  
 5 *vice Act of 2001”.*

1 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
 2 **PROVISION OF INVESTMENT ADVICE.**

3 (a) *AMENDMENTS TO THE EMPLOYEE RETIREMENT*  
 4 *INCOME SECURITY ACT OF 1974.*—

5 (1) *EXEMPTION FROM PROHIBITED TRANS-*  
 6 *ACTIONS.*—*Section 408(b) of the Employee Retirement*  
 7 *Income Security Act of 1974 (29 U.S.C. 1108(b)) is*  
 8 *amended by adding at the end the following new*  
 9 *paragraph:*

10 “(14)(A) *Any transaction described in subpara-*  
 11 *graph (B) in connection with the provision of invest-*  
 12 *ment advice described in section 3(21)(A)(ii), in any*  
 13 *case in which—*

14 “(i) *the investment of assets of the plan are*  
 15 *subject to the direction of plan participants or*  
 16 *beneficiaries,*

17 “(ii) *the advice is provided to the plan or*  
 18 *a participant or beneficiary of the plan by a fi-*  
 19 *ducuary adviser in connection with any sale, ac-*  
 20 *quisition, or holding of a security or other prop-*  
 21 *erty for purposes of investment of plan assets,*  
 22 *and*

23 “(iii) *the requirements of subsection (g) are*  
 24 *met in connection with the provision of the ad-*  
 25 *vice.*

1           “(B) *The transactions described in this subpara-*  
 2           *graph are the following:*

3                   “(i) *the provision of the advice to the plan,*  
 4                   *participant, or beneficiary;*

5                   “(ii) *the sale, acquisition, or holding of a*  
 6                   *security or other property (including any lend-*  
 7                   *ing of money or other extension of credit associ-*  
 8                   *ated with the sale, acquisition, or holding of a*  
 9                   *security or other property) pursuant to the ad-*  
 10                   *vice; and*

11                   “(iii) *the direct or indirect receipt of fees or*  
 12                   *other compensation by the fiduciary adviser or*  
 13                   *an affiliate thereof (or any employee, agent, or*  
 14                   *registered representative of the fiduciary adviser*  
 15                   *or affiliate) in connection with the provision of*  
 16                   *the advice or in connection with a sale, acquisi-*  
 17                   *tion, or holding of a security or other property*  
 18                   *pursuant to the advice.”.*

19           (2) *REQUIREMENTS.—Section 408 of such Act is*  
 20           *amended further by adding at the end the following*  
 21           *new subsection:*

22           “(g) *REQUIREMENTS RELATING TO PROVISION OF IN-*  
 23           *VESTMENT ADVICE BY FIDUCIARY ADVISERS.—*

24                   “(1) *IN GENERAL.—The requirements of this sub-*  
 25                   *section are met in connection with the provision of*

1     *investment advice referred to in section 3(21)(A)(ii)*  
2     *provided to an employee benefit plan or a participant*  
3     *or beneficiary of an employee benefit plan by a fidu-*  
4     *ciary adviser with respect to the plan in connection*  
5     *with any sale, acquisition, or holding of a security or*  
6     *other property for purposes of investment of amounts*  
7     *held by the plan, if—*

8             *“(A) in the case of the initial provision of*  
9             *the advice with regard to the security or other*  
10            *property by the fiduciary adviser to the plan,*  
11            *participant, or beneficiary, the fiduciary adviser*  
12            *provides to the recipient of the advice, at a time*  
13            *reasonably contemporaneous with the initial pro-*  
14            *vision of the advice, a written notification*  
15            *(which may consist of notification by means of*  
16            *electronic communication)—*

17            *“(i) of all fees or other compensation*  
18            *relating to the advice that the fiduciary ad-*  
19            *viser or any affiliate thereof is to receive*  
20            *(including compensation provided by any*  
21            *third party) in connection with the provi-*  
22            *sion of the advice or in connection with the*  
23            *sale, acquisition, or holding of the security*  
24            *or other property,*

1           “(ii) of any material affiliation or  
2           contractual relationship of the fiduciary ad-  
3           viser or affiliates thereof in the security or  
4           other property,

5           “(iii) of any limitation placed on the  
6           scope of the investment advice to be pro-  
7           vided by the fiduciary adviser with respect  
8           to any such sale, acquisition, or holding of  
9           a security or other property,

10          “(iv) of the types of services provided  
11          by the fiduciary adviser in connection with  
12          the provision of investment advice by the fi-  
13          duciary adviser, and

14          “(v) that the adviser is acting as a fi-  
15          duciary of the plan in connection with the  
16          provision of the advice,

17          “(B) the fiduciary adviser provides appro-  
18          priate disclosure, in connection with the sale, ac-  
19          quisition, or holding of the security or other  
20          property, in accordance with all applicable secu-  
21          rities laws,

22          “(C) the sale, acquisition, or holding occurs  
23          solely at the direction of the recipient of the ad-  
24          vice,

1           “(D) the compensation received by the fidu-  
2           ciary adviser and affiliates thereof in connection  
3           with the sale, acquisition, or holding of the secu-  
4           rity or other property is reasonable, and

5           “(E) the terms of the sale, acquisition, or  
6           holding of the security or other property are at  
7           least as favorable to the plan as an arm’s length  
8           transaction would be.

9           “(2) *STANDARDS FOR PRESENTATION OF INFOR-*  
10          *MATION.—The notification required to be provided to*  
11          *participants and beneficiaries under paragraph*  
12          *(1)(A) shall be written in a clear and conspicuous*  
13          *manner and in a manner calculated to be understood*  
14          *by the average plan participant and shall be suffi-*  
15          *ciently accurate and comprehensive to reasonably ap-*  
16          *prise such participants and beneficiaries of the infor-*  
17          *mation required to be provided in the notification.*

18          “(3) *EXEMPTION CONDITIONED ON CONTINUED*  
19          *AVAILABILITY OF REQUIRED INFORMATION ON RE-*  
20          *QUEST FOR 1 YEAR.—The requirements of paragraph*  
21          *(1)(A) shall be deemed not to have been met in con-*  
22          *nection with the initial or any subsequent provision*  
23          *of advice described in paragraph (1) to the plan, par-*  
24          *ticipant, or beneficiary if, at any time during the 1-*  
25          *year period following the provision of the advice, the*

1     *fiduciary adviser fails to maintain the information*  
2     *described in clauses (i) through (iv) of subparagraph*  
3     *(A) in currently accurate form or to make the infor-*  
4     *mation available, upon request and without charge, to*  
5     *the recipient of the advice.*

6             “(4) *MAINTENANCE FOR 6 YEARS OF EVIDENCE*  
7     *OF COMPLIANCE.—A fiduciary adviser referred to in*  
8     *paragraph (1) who has provided advice referred to in*  
9     *such paragraph shall, for a period of not less than 6*  
10    *years after the provision of the advice, maintain any*  
11    *records necessary for determining whether the require-*  
12    *ments of the preceding provisions of this subsection*  
13    *and of subsection (b)(14) have been met. A trans-*  
14    *action prohibited under section 406 shall not be con-*  
15    *sidered to have occurred solely because the records are*  
16    *lost or destroyed prior to the end of the 6-year period*  
17    *due to circumstances beyond the control of the fidu-*  
18    *ciary adviser.*

19             “(5) *EXEMPTION FOR PLAN SPONSOR AND CER-*  
20    *TAIN OTHER FIDUCIARIES.—*

21             “(A) *IN GENERAL.—Subject to subpara-*  
22    *graph (B), a plan sponsor or other person who*  
23    *is a fiduciary (other than a fiduciary adviser)*  
24    *shall not be treated as failing to meet the re-*  
25    *quirements of this part solely by reason of the*



1        *provision of investment advice referred to in sec-*  
 2        *tion 3(21)(A)(ii) (or solely by reason of con-*  
 3        *tracting for or otherwise arranging for the provi-*  
 4        *sion of the advice), if—*

5                *“(i) the advice is provided by a fidu-*  
 6                *ciary adviser pursuant to an arrangement*  
 7                *between the plan sponsor or other fiduciary*  
 8                *and the fiduciary adviser for the provision*  
 9                *by the fiduciary adviser of investment ad-*  
 10              *vice referred to in such section,*

11              *“(ii) the terms of the arrangement re-*  
 12              *quire compliance by the fiduciary adviser*  
 13              *with the requirements of this subsection,*  
 14              *and*

15              *“(iii) the terms of the arrangement in-*  
 16              *clude a written acknowledgment by the fidu-*  
 17              *ciary adviser that the fiduciary adviser is a*  
 18              *fiduciary of the plan with respect to the*  
 19              *provision of the advice.*

20              *“(B) CONTINUED DUTY OF PRUDENT SELEC-*  
 21              *TION OF ADVISER AND PERIODIC REVIEW.—Noth-*  
 22              *ing in subparagraph (A) shall be construed to*  
 23              *exempt a plan sponsor or other person who is a*  
 24              *fiduciary from any requirement of this part for*  
 25              *the prudent selection and periodic review of a fi-*

1        *duciary adviser with whom the plan sponsor or*  
 2        *other person enters into an arrangement for the*  
 3        *provision of advice referred to in section*  
 4        *3(21)(A)(ii). The plan sponsor or other person*  
 5        *who is a fiduciary has no duty under this part*  
 6        *to monitor the specific investment advice given*  
 7        *by the fiduciary adviser to any particular re-*  
 8        *cipient of the advice.*

9                *“(C) AVAILABILITY OF PLAN ASSETS FOR*  
 10        *PAYMENT FOR ADVICE.—Nothing in this part*  
 11        *shall be construed to preclude the use of plan as-*  
 12        *sets to pay for reasonable expenses in providing*  
 13        *investment advice referred to in section*  
 14        *3(21)(A)(ii).*

15                *“(6) DEFINITIONS.—For purposes of this sub-*  
 16        *section and subsection (b)(14)—*

17                *“(A) FIDUCIARY ADVISER.—The term ‘fidu-*  
 18        *ciary adviser’ means, with respect to a plan, a*  
 19        *person who is a fiduciary of the plan by reason*  
 20        *of the provision of investment advice by the per-*  
 21        *son to the plan or to a participant or beneficiary*  
 22        *and who is—*

23                *“(i) registered as an investment ad-*  
 24        *viser under the Investment Advisers Act of*  
 25        *1940 (15 U.S.C. 80b-1 et seq.) or under the*

1           *laws of the State in which the fiduciary*  
2           *maintains its principal office and place of*  
3           *business,*

4           “(ii) *a bank or similar financial insti-*  
5           *tution referred to in section 408(b)(4),*

6           “(iii) *an insurance company qualified*  
7           *to do business under the laws of a State,*

8           “(iv) *a person registered as a broker or*  
9           *dealer under the Securities Exchange Act of*  
10          *1934 (15 U.S.C. 78a et seq.),*

11          “(v) *an affiliate of a person described*  
12          *in any of clauses (i) through (iv), or*

13          “(vi) *an employee, agent, or registered*  
14          *representative of a person described in any*  
15          *of clauses (i) through (v) who satisfies the*  
16          *requirements of applicable insurance, bank-*  
17          *ing, and securities laws relating to the pro-*  
18          *vision of the advice.*

19          “(B) *AFFILIATE.*—*The term ‘affiliate’ of*  
20          *another entity means an affiliated person of the*  
21          *entity (as defined in section 2(a)(3) of the In-*  
22          *vestment Company Act of 1940 (15 U.S.C. 80a-*  
23          *2(a)(3))).*

24          “(C) *REGISTERED REPRESENTATIVE.*—*The*  
25          *term ‘registered representative’ of another entity*

1        *means a person described in section 3(a)(18) of*  
 2        *the Securities Exchange Act of 1934 (15 U.S.C.*  
 3        *78c(a)(18)) (substituting the entity for the broker*  
 4        *or dealer referred to in such section) or a person*  
 5        *described in section 202(a)(17) of the Investment*  
 6        *Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17))*  
 7        *(substituting the entity for the investment ad-*  
 8        *viser referred to in such section).”.*

9        *(b) AMENDMENTS TO THE INTERNAL REVENUE CODE*  
 10      *OF 1986.—*

11              *(1) IN GENERAL.—Subsection (d) of section 4975*  
 12        *of the Internal Revenue Code of 1986 (relating to ex-*  
 13        *emptions from tax on prohibited transactions) is*  
 14        *amended—*

15                      *(A) in paragraph (14), by striking “or” at*  
 16        *the end;*

17                      *(B) in paragraph (15), by striking the pe-*  
 18        *riod at the end and inserting “; or”; and*

19                      *(C) by adding at the end the following new*  
 20        *paragraph:*

21                      *“(16) If the requirements of subsection (f)(7) are*  
 22        *met—*

23                              *“(A) the provision of investment advice re-*  
 24        *ferred to in subsection (e)(3)(B) provided by a fi-*  
 25        *duciary adviser (as defined in subsection*

(f)(7)(C)(i)) to a plan or to a participant or beneficiary of a plan,

“(B) the sale, acquisition, or holding of securities or other property (including any extension of credit associated with the sale, acquisition, or holding of securities or other property) pursuant to such investment advice, and

“(C) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of such investment advice.”.

(2) *REQUIREMENTS*.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

“(7) *REQUIREMENTS FOR EXEMPTION FOR INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS*.—

“(A) *IN GENERAL*.—The requirements of this paragraph are met in connection with the provision of advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with

1       *respect to such plan, in connection with any sale*  
2       *or acquisition of a security or other property for*  
3       *purposes of investment of amounts held by such*  
4       *plan, if—*

5               *“(i) in the case of the initial provision*  
6               *of such advice by such fiduciary adviser to*  
7               *such plan, participant, or beneficiary, the*  
8               *fiduciary adviser provides to the plan, par-*  
9               *ticipant, or beneficiary, at the time of or be-*  
10              *fore the initial provision of such advice, a*  
11              *description, in writing or by means of elec-*  
12              *tronic communication, of—*

13              *“(I) all fees or other compensation*  
14              *relating to such advice that the fidu-*  
15              *ciary adviser or any affiliate thereof is*  
16              *to receive (including compensation*  
17              *provided by any third party) in con-*  
18              *nection with the provision of such ad-*  
19              *vice or in connection with such acqui-*  
20              *sition or sale,*

21              *“(II) any material affiliation or*  
22              *contractual relationship of the fidu-*  
23              *ciary adviser or affiliates thereof in*  
24              *such security or other property,*

1           “(III) any limitation placed on  
2           the scope of the investment advice to be  
3           provided by the fiduciary adviser with  
4           respect to any such sale or acquisition,  
5           and

6           “(IV) the types of services offered  
7           by the fiduciary advisor in connection  
8           with the provision of investment advice  
9           by the fiduciary adviser,

10          “(ii) in the case of the initial or any  
11          subsequent provision of such advice to such  
12          plan, participant, or beneficiary, the fidu-  
13          ciary adviser, throughout the 1-year period  
14          following the provision of such advice,  
15          maintains the information described in sub-  
16          clauses (I) through (IV) of clause (i) in cur-  
17          rently accurate form for availability, upon  
18          request and without charge, to the recipient  
19          of such advice,

20          “(iii) the fiduciary adviser provides  
21          appropriate disclosure, in connection with  
22          any such acquisition or sale, in accordance  
23          with all applicable securities laws,

1           “(iv) such acquisition or sale occurs  
2           solely at the discretion of the recipient of  
3           such advice,

4           “(v) the compensation received by the  
5           fiduciary adviser and affiliates thereof in  
6           connection with such acquisition or sale is  
7           reasonable, and

8           “(vi) the terms of such acquisition or  
9           sale are at least as favorable to such plan  
10          as an arm’s length transaction would be.

11          “(B) MAINTENANCE OF RECORDS.—A fidu-  
12          ciary adviser referred to in subparagraph (A)  
13          who has provided advice referred to in such sub-  
14          paragraph shall, for a period of not less than 6  
15          years after the provision of such advice, main-  
16          tain any records necessary for determining  
17          whether the requirements of the preceding provi-  
18          sions of this subsection and of subsection (d)(16)  
19          have been met. A prohibited transaction de-  
20          scribed in subsection (c)(1) shall not be consid-  
21          ered to have occurred solely because the records  
22          are lost or destroyed prior to the end of the 6-  
23          year period due to circumstances beyond the con-  
24          trol of the fiduciary adviser.



1           “(C) *DEFINITIONS.*—*For purposes of this*  
2           *paragraph and subsection (d)(16)—*

3           “(i) *FIDUCIARY ADVISER.*—*The term*  
4           *‘fiduciary adviser’ means, with respect to a*  
5           *plan, a person who is a fiduciary of the*  
6           *plan by reason of the provision of invest-*  
7           *ment advice by such person to the plan or*  
8           *to a participant or beneficiary and who*  
9           *is—*

10           “(I) *registered as an investment*  
11           *adviser under the Investment Advisers*  
12           *Act of 1940 (15 U.S.C. 80b-1 et seq.) or*  
13           *under the laws of the State in which*  
14           *the fiduciary maintains its principal*  
15           *office and place of business,*

16           “(II) *a bank or similar financial*  
17           *institution referred to in subsection*  
18           *(d)(4),*

19           “(III) *an insurance company*  
20           *qualified to do business under the laws*  
21           *of a State,*

22           “(IV) *a person registered as a*  
23           *broker or dealer under the Securities*  
24           *Exchange Act of 1934 (15 U.S.C. 78a*  
25           *et seq.),*

1 “(V) an affiliate of a person de-  
 2 scribed in any of subclauses (I)  
 3 through (IV), or

4 “(VI) an employee, agent, or reg-  
 5 istered representative of a person de-  
 6 scribed in any of subclauses (I)  
 7 through (V).

8 “(ii) *AFFILIATE*.—The term ‘affiliate’  
 9 means an affiliated person, as defined in  
 10 section 2(a)(3) of the Investment Company  
 11 Act of 1940 (15 U.S.C. 80a-2(a)(3)).

12 “(iii) *REGISTERED REPRESENTA-*  
 13 *TIVE*.—The term ‘registered representative’  
 14 means a person described in section  
 15 3(a)(18) of the Securities Exchange Act of  
 16 1934 (15 U.S.C. 78c(a)(18)) or section  
 17 202(a)(17) of the Investment Advisers Act of  
 18 1940 (15 U.S.C. 80b-2(a)(17)).”.

19 **SEC. 3. EFFECTIVE DATE.**

20 *The amendments made by this Act shall apply with*  
 21 *respect to advice referred to in section 3(21)(A)(ii) of the*  
 22 *Employee Retirement Income Security Act of 1974 or sec-*  
 23 *tion 4975(e)(3)(B) of the Internal Revenue Code of 1986*  
 24 *provided on or after January 1, 2002.*

1 SECTION 1. SHORT TITLE.

2       **This Act may be cited as the “Retirement**  
3 **Security Advice Act of 2001”.**

4 SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR THE  
5               PROVISION OF INVESTMENT ADVICE.

6       **(a) AMENDMENTS TO THE EMPLOYEE RETIRE-**  
7 **MENT INCOME SECURITY ACT OF 1974.—**

8               **(1) IN GENERAL.—Section 408(b) of the**  
9 **Employee Retirement Income Security**  
10 **Act of 1974 (29 U.S.C. 1108(b)) is amended**  
11 **by adding at the end the following new**  
12 **paragraph:**

13               **“(14) If the requirements of sub-**  
14 **section (g) are met—**

15               **“(A) the provision of investment**  
16 **advice referred to in section**  
17 **3(21)(A)(ii) provided by a fiduciary**  
18 **adviser (as defined in subsection**  
19 **(g)(4)(A)) to an employee benefit plan**  
20 **or to a participant or beneficiary of**  
21 **an employee benefit plan,**

22               **“(B) the sale, acquisition, or hold-**  
23 **ing of securities or other property**  
24 **(including any lending of money or**  
25 **other extension of credit associated**  
26 **with the sale, acquisition, or holding**

1           of securities or other property) pur-  
2           suant to such investment advice, and  
3           “(C) the direct or indirect receipt  
4           of fees or other compensation by the  
5           fiduciary adviser or an affiliate there-  
6           of (or any employee, agent, or reg-  
7           istered representative of the fidu-  
8           ciary adviser or affiliate) in connec-  
9           tion with the provision of such invest-  
10          ment advice.”.

11          (2) REQUIREMENTS.—Section 408 of  
12          such Act is amended further by adding at  
13          the end the following new subsection:

14          “(g)(1) The requirements of this sub-  
15          section are met in connection with the provi-  
16          sion of advice referred to in section  
17          3(21)(A)(ii), provided to an employee benefit  
18          plan or a participant or beneficiary of an em-  
19          ployee benefit plan by a fiduciary adviser  
20          with respect to such plan, in connection with  
21          any sale or acquisition of a security or other  
22          property for purposes of investment of  
23          amounts held by such plan, if—

24                  “(A) in the case of the initial provi-  
25          sion of such advice with regard to a secu-

1       rity or other property, by such fiduciary  
2       adviser to such plan, participant, or ben-  
3       eficiary, the fiduciary adviser provides to  
4       the recipient of such advice, at the time  
5       of or before the initial provision of such  
6       advice, a clear and conspicuous descrip-  
7       tion, in writing (including by means of  
8       electronic communication), of—

9               “(i) all fees or other compensation  
10              relating to such advice that the fidu-  
11              ciary adviser or any affiliate thereof  
12              is to receive (including compensation  
13              provided by any third party) in con-  
14              nection with the provision of such ad-  
15              vice or in connection with such ac-  
16              quisition or sale,

17             “(ii) any material affiliation or  
18             contractual relationship of the fidu-  
19             ciary adviser or affiliates thereof in  
20             such security or other property,

21             “(iii) any limitation placed on the  
22             scope of the investment advice to be  
23             provided by the fiduciary adviser  
24             with respect to any such sale or ac-  
25             quisition, and

1           “(iv) the types of services offered  
2           by the fiduciary advisor in connec-  
3           tion with the provision of investment  
4           advice by the fiduciary adviser,

5           “(B) in the case of the initial or any  
6           subsequent provision of such advice to  
7           such plan, participant, or beneficiary, the  
8           fiduciary adviser, throughout the 1-year  
9           period following the provision of such ad-  
10          vice, maintains the information described  
11          in clauses (i) through (iv) of subpara-  
12          graph (A) in currently accurate form for  
13          availability, upon request and without  
14          charge, to the recipient of such advice,

15          “(C) the fiduciary adviser provides  
16          appropriate disclosure, in connection  
17          with any such acquisition or sale, in ac-  
18          cordance with all applicable securities  
19          laws,

20          “(D) such acquisition or sale occurs  
21          solely at the direction of the recipient of  
22          such advice,

23          “(E) the compensation received by the  
24          fiduciary adviser and affiliates thereof in

1 connection with such acquisition or sale  
2 is reasonable, and

3 “(F) the terms of such acquisition or  
4 sale are at least as favorable to such plan  
5 as an arm’s length transaction would be.

6 “(2) A fiduciary adviser referred to in  
7 paragraph (1) who has provided advice re-  
8 ferred to in such paragraph shall, for a period  
9 of not less than 6 years after the provision of  
10 such advice, maintain any records necessary  
11 for determining whether the requirements of  
12 the preceding provisions of this subsection  
13 and of subsection (b)(14) have been met. A  
14 transaction prohibited under section 406 shall  
15 not be considered to have occurred solely be-  
16 cause the records are lost or destroyed prior  
17 to the end of the 6-year period due to cir-  
18 cumstances beyond the control of the fidu-  
19 ciary adviser.

20 “(3)(A) Subject to subparagraph (B), a  
21 plan sponsor or other person who is a fidu-  
22 ciary shall not be treated as failing to meet  
23 the requirements of this part solely by reason  
24 of the provision of investment advice referred  
25 to in section 3(21)(A)(ii) (or solely by reason

1 of contracting for or otherwise arranging for  
2 the provision of such investment advice), if—

3 “(i) such advice is provided by a fidu-  
4 ciary adviser pursuant to an arrange-  
5 ment between such plan sponsor or other  
6 fiduciary and such fiduciary adviser for  
7 the provision by such fiduciary adviser of  
8 investment advice referred to in such sec-  
9 tion, and

10 “(ii) the terms of such arrangement  
11 require compliance by the fiduciary ad-  
12 viser with the requirements of this sub-  
13 section.

14 “(B) Nothing in subparagraph (A) shall be  
15 construed to exempt a plan sponsor or other  
16 person who is a fiduciary from any require-  
17 ment of this part for the prudent selection  
18 and periodic review of a fiduciary adviser  
19 with whom the plan sponsor or other person  
20 enters into an arrangement for the provision  
21 of advice referred to in section 3(21)(A)(ii).  
22 Such plan sponsor or other person who is a  
23 fiduciary has no duty under this part to mon-  
24 itor the specific investment advice given by



1 the fiduciary adviser to any particular recipi-  
2 ent of such advice.

3 “(C) Nothing in this part shall be con-  
4 strued to preclude the use of plan assets to  
5 pay for reasonable expenses in providing in-  
6 vestment advice referred to in section  
7 3(21)(A)(ii).

8 “(4) For purposes of this subsection and  
9 subsection (b)(14)—

10 “(A) The term ‘fiduciary adviser’  
11 means, with respect to a plan, a person  
12 who is a fiduciary of the plan by reason  
13 of the provision of investment advice by  
14 such person to the plan or to a partici-  
15 pant or beneficiary and who is—

16 “(i) registered as an investment  
17 adviser under the Investment Advis-  
18 ers Act of 1940 (15 U.S.C. 80b-1 et  
19 seq.) or under the laws of the State in  
20 which the fiduciary maintains its  
21 principal office and place of business,

22 “(ii) a bank or similar financial  
23 institution referred to in section  
24 408(b)(4),

1           “(iii) an insurance company quali-  
2           fied to do business under the laws of  
3           a State,

4           “(iv) a person registered as a  
5           broker or dealer under the Securities  
6           Exchange Act of 1934 (15 U.S.C. 78a et  
7           seq.),

8           “(v) an affiliate of a person de-  
9           scribed in any of clauses (i) through  
10          (iv), or

11          “(vi) an employee, agent, or reg-  
12          istered representative of a person de-  
13          scribed in any of clauses (i) through  
14          (v).

15          “(B) The term ‘affiliate’ means an af-  
16          filiated person, as defined in section  
17          2(a)(3) of the Investment Company Act of  
18          1940 (15 U.S.C. 80a-2(a)(3)).

19          “(C) The term ‘registered representa-  
20          tive’ means a person described in section  
21          3(a)(18) of the Securities Exchange Act of  
22          1934 (15 U.S.C. 78c(a)(18)) or section  
23          202(a)(17) of the Investment Advisers Act  
24          of 1940 (15 U.S.C. 80b-2(a)(17)).”.

1       **(b) AMENDMENTS TO THE INTERNAL REVENUE**  
2 **CODE OF 1986.—**

3           **(1) EXEMPTION FROM PROHIBITED**  
4 **TRANSACTIONS.—**Subsection (d) of section  
5 **4975 of the Internal Revenue Code of**  
6 **1986 (relating to exemptions from tax on**  
7 **prohibited transactions) is amended—**

8                   **(A) in paragraph (14), by striking**  
9 **“or” at the end;**

10                   **(B) in paragraph (15), by striking**  
11 **the period at the end and inserting**  
12 **“; or”; and**

13                   **(C) by adding at the end the fol-**  
14 **lowing new paragraph:**

15                   **“(16) any transaction described in**  
16 **subsection (f)(7)(A) in connection with**  
17 **the provision of investment advice de-**  
18 **scribed in subsection (e)(3)(B), in any**  
19 **case in which—**

20                           **“(A) the investment of assets of**  
21 **the plan is subject to the direction of**  
22 **plan participants or beneficiaries,**

23                           **“(B) the advice is provided to the**  
24 **plan or a participant or beneficiary of**  
25 **the plan by a fiduciary adviser in**

1 connection with any sale, acquisition,  
2 or holding of a security or other  
3 property for purposes of investment  
4 of plan assets, and

5 “(C) the requirements of sub-  
6 section (f)(7)(B) are met in connection  
7 with the provision of the advice.”

8 (2) ALLOWED TRANSACTIONS AND RE-  
9 QUIREMENTS.—Subsection (f) of such sec-  
10 tion 4975 (relating to other definitions  
11 and special rules) is amended by adding  
12 at the end the following new paragraph:

13 “(7) PROVISIONS RELATING TO INVEST-  
14 MENT ADVICE PROVIDED BY FIDUCIARY ADVIS-  
15 ERS.—

16 “(A) TRANSACTIONS ALLOWABLE IN  
17 CONNECTION WITH INVESTMENT ADVICE  
18 PROVIDED BY FIDUCIARY ADVISERS.—The  
19 transactions referred to in subsection  
20 (d)(16), in connection with the provi-  
21 sion of investment advice by a fidu-  
22 ciary adviser, are the following:

23 “(i) the provision of the advice  
24 to the plan, participant, or bene-  
25 ficiary;

1           “(ii) the sale, acquisition, or  
2           holding of a security or other  
3           property (including any lending  
4           of money or other extension of  
5           credit associated with the sale,  
6           acquisition, or holding of a secu-  
7           rity or other property) pursuant  
8           to the advice; and

9           “(iii) the direct or indirect re-  
10          ceipt of fees or other compensa-  
11          tion by the fiduciary adviser or  
12          an affiliate thereof (or any em-  
13          ployee, agent, or registered rep-  
14          resentative of the fiduciary ad-  
15          viser or affiliate) in connection  
16          with the provision of the advice  
17          or in connection with a sale, ac-  
18          quisition, or holding of a security  
19          or other property pursuant to the  
20          advice.

21          “(B) REQUIREMENTS RELATING TO  
22          PROVISION OF INVESTMENT ADVICE BY FI-  
23          DUCIARY ADVISERS.—The requirements  
24          of this subparagraph (referred to in  
25          subsection (d)(16)(C)) are met in con-

1           nection with the provision of invest-  
2           ment advice referred to in subsection  
3           (e)(3)(B), provided to a plan or a par-  
4           ticipant or beneficiary of a plan by a  
5           fiduciary adviser with respect to the  
6           plan in connection with any sale, ac-  
7           quisition, or holding of a security or  
8           other property for purposes of invest-  
9           ment of amounts held by the plan,  
10          if—

11                 “(i) in the case of the initial  
12                 provision of the advice with re-  
13                 gard to the security or other  
14                 property by the fiduciary adviser  
15                 to the plan, participant, or bene-  
16                 ficiary, the fiduciary adviser pro-  
17                 vides to the recipient of the ad-  
18                 vice, at a time reasonably contem-  
19                 poraneous with the initial provi-  
20                 sion of the advice, a written noti-  
21                 fication (which may consist of no-  
22                 tification by means of electronic  
23                 communication)—

24                         “(I) of all fees or other  
25                         compensation relating to the

1           **advice that the fiduciary ad-**  
2           **viser or any affiliate thereof is**  
3           **to receive (including com-**  
4           **pensation provided by any**  
5           **third party) in connection**  
6           **with the provision of the ad-**  
7           **vice or in connection with the**  
8           **sale, acquisition, or holding of**  
9           **the security or other prop-**  
10          **erty,**

11           **“(II) of any material affili-**  
12          **ation or contractual relation-**  
13          **ship of the fiduciary adviser**  
14          **or affiliates thereof in the se-**  
15          **curity or other property,**

16           **“(III) of any limitation**  
17          **placed on the scope of the in-**  
18          **vestment advice to be pro-**  
19          **vided by the fiduciary adviser**  
20          **with respect to any such sale,**  
21          **acquisition, or holding of a se-**  
22          **curity or other property,**

23           **“(IV) of the types of serv-**  
24          **ices provided by the fiduciary**  
25          **advisor in connection with**

1           the provision of investment  
2           advice by the fiduciary ad-  
3           viser, and

4           “(V) that the adviser is  
5           acting as a fiduciary of the  
6           plan in connection with the  
7           provision of the advice,

8           “(ii) the fiduciary adviser pro-  
9           vides appropriate disclosure, in  
10          connection with the sale, acquisi-  
11          tion, or holding of the security or  
12          other property, in accordance  
13          with all applicable securities  
14          laws,

15          “(iii) the sale, acquisition, or  
16          holding occurs solely at the direc-  
17          tion of the recipient of the advice,

18          “(iv) the compensation re-  
19          ceived by the fiduciary adviser  
20          and affiliates thereof in connec-  
21          tion with the sale, acquisition, or  
22          holding of the security or other  
23          property is reasonable, and

24          “(v) the terms of the sale, ac-  
25          quisition, or holding of the secu-



1           rity or other property are at least  
2           as favorable to the plan as an  
3           arm's length transaction would  
4           be.

5           “(C) STANDARDS FOR PRESENTATION  
6           OF INFORMATION.—The notification re-  
7           quired to be provided to participants  
8           and beneficiaries under subpara-  
9           graph (B)(i) shall be written in a clear  
10          and conspicuous manner and in a  
11          manner calculated to be understood  
12          by the average plan participant and  
13          shall be sufficiently accurate and  
14          comprehensive to reasonably apprise  
15          such participants and beneficiaries of  
16          the information required to be pro-  
17          vided in the notification.

18          “(D) EXEMPTION CONDITIONED ON  
19          MAKING REQUIRED INFORMATION AVAIL-  
20          ABLE ANNUALLY, ON REQUEST, AND IN  
21          THE EVENT OF MATERIAL CHANGE.—The  
22          requirements of subparagraph (B)(i)  
23          shall be deemed not to have been met  
24          in connection with the initial or any  
25          subsequent provision of advice de-

1       scribed in subparagraph (B) to the  
2       plan, participant, or beneficiary if, at  
3       any time during the provision of advi-  
4       sory services to the plan, participant,  
5       or beneficiary, the fiduciary adviser  
6       fails to maintain the information de-  
7       scribed in subclauses (I) through (IV)  
8       of subparagraph (B)(i) in currently  
9       accurate form and in the manner re-  
10      quired by subparagraph (C), or fails—

11           “(i) to provide, without  
12           charge, such currently accurate  
13           information to the recipient of  
14           the advice no less than annually,

15           “(ii) to make such currently  
16           accurate information available,  
17           upon request and without charge,  
18           to the recipient of the advice, or

19           “(iii) in the event of a material  
20           change to the information de-  
21           scribed in subclauses (I) through  
22           (IV) of subparagraph (B)(i), to  
23           provide, without charge, such  
24           currently accurate information to  
25           the recipient of the advice at a

1           time reasonably contemporaneous  
2           to the material change in infor-  
3           mation.

4           “(E) MAINTENANCE FOR 6 YEARS OF  
5           EVIDENCE OF COMPLIANCE.—A fiduciary  
6           adviser referred to in subparagraph  
7           (B) who has provided advice referred  
8           to in such subparagraph shall, for a  
9           period of not less than 6 years after  
10          the provision of the advice, maintain  
11          any records necessary for deter-  
12          mining whether the requirements of  
13          the preceding provisions of this para-  
14          graph and of subsection (d)(16) have  
15          been met. A transaction prohibited  
16          under subsection (c)(1) shall not be  
17          considered to have occurred solely  
18          because the records are lost or de-  
19          stroyed prior to the end of the 6-year  
20          period due to circumstances beyond  
21          the control of the fiduciary adviser.

22          “(F) DEFINITIONS.—For purposes  
23          of this paragraph and subsection  
24          (d)(16)—

1           **“(i) FIDUCIARY ADVISER.—The**  
2           **term ‘fiduciary adviser’ means,**  
3           **with respect to a plan, a person**  
4           **who is a fiduciary of the plan by**  
5           **reason of the provision of invest-**  
6           **ment advice by the person to the**  
7           **plan or to a participant or bene-**  
8           **ficiary and who is—**

9                   **“(I) registered as an in-**  
10                  **vestment adviser under the**  
11                  **Investment Advisers Act of**  
12                  **1940 (15 U.S.C. 80b-1 et seq.)**  
13                  **or under the laws of the State**  
14                  **in which the fiduciary main-**  
15                  **tains its principal office and**  
16                  **place of business,**

17                  **“(II) a bank or similar fi-**  
18                  **nancial institution referred to**  
19                  **in subsection (d)(4),**

20                  **“(III) an insurance com-**  
21                  **pany qualified to do business**  
22                  **under the laws of a State,**

23                  **“(IV) a person registered**  
24                  **as a broker or dealer under**

1           the Securities Exchange Act  
2           of 1934 (15 U.S.C. 78a et seq.),

3           “(V) an affiliate of a per-  
4           son described in any of sub-  
5           clauses (I) through (IV), or

6           “(VI) an employee, agent,  
7           or registered representative  
8           of a person described in any  
9           of subclauses (I) through (V)  
10          who satisfies the require-  
11          ments of applicable insur-  
12          ance, banking, and securities  
13          laws relating to the provision  
14          of the advice.

15          “(ii) AFFILIATE.—The term ‘af-  
16          filiate’ of another entity means an  
17          affiliated person of the entity (as  
18          defined in section 2(a)(3) of the  
19          Investment Company Act of 1940  
20          (15 U.S.C. 80a-2(a)(3))).

21          “(iii) REGISTERED REPRESENTA-  
22          TIVE.—The term ‘registered rep-  
23          resentative’ of another entity  
24          means a person described in sec-  
25          tion 3(a)(18) of the Securities Ex-

1           **change Act of 1934 (15 U.S.C.**  
2           **78c(a)(18)) (substituting the entity**  
3           **for the broker or dealer referred**  
4           **to in such section) or a person de-**  
5           **scribed in section 202(a)(17) of the**  
6           **Investment Advisers Act of 1940**  
7           **(15 U.S.C. 80b-2(a)(17)) (sub-**  
8           **stituting the entity for the invest-**  
9           **ment adviser referred to in such**  
10          **section)."**

11 **SEC. 3. EFFECTIVE DATE.**

12       **The amendments made by this Act shall**  
13 **apply with respect to advice referred to in**  
14 **section 3(21)(A)(ii) of the Employee Retire-**  
15 **ment Income Security Act of 1974 or section**  
16 **4975(e)(3)(B) of the Internal Revenue Code of**  
17 **1986 provided on or after January 1, 2002.**



**Union Calendar No. 174**

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 2269**

**[Report No. 107–262, Parts I and II]**

---

---

**A BILL**

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets.

---

---

NOVEMBER 13, 2001

Reported from the Committee on Ways and Means with an amendment; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed